



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Vale District Office

100 Oregon Street

Vale, Oregon 97918

<http://www.blm.gov/or/districts/vale>

JAN 23 2015



4160 (ORV060)
3600281
11305
725225, 724085

CERTIFIED MAIL – RETURN RECEIPT REQUESTED:

Richmar LLC.
3635Arock Rd, RT 2
Jordan Valley, OR 97910

NOTICE OF FIELD MANAGER'S PROPOSED DECISION

Dear Mr. Eiguren:

BACKGROUND

In 2009, you modified the Tree Spring Pipeline (Range Improvement Project # 725225) without authorization. The modifications included adding two spur lines to this livestock watering pipeline, adding a trough at the end of each spur, and the realignment of the Bankofier Allotment fence (#724085). The old Bankofier allotment is now referred to as the Eiguren allotment. The modification created two new water sources in the Chimney Creek pasture of the Eiguren Allotment (#11305) and are located at T.35S., R.42E., W.M. sections 17 and 18 (Map 1).

On October 14, 2009, you were sent a Notice of Trespass for the unauthorized modifications. Included with the trespass notice was a letter explaining why BLM determined the modifications unauthorized. In addition, the letter explained the process BLM must follow to authorize the installation of new rangeland improvements or the modification of existing improvements. Later you agreed to settlement of the unauthorized modifications. Among other things, you agreed to pay the cost of the environmental analysis and to not use the spur lines until given approval from the BLM to do so. In 2011, the BLM completed Environmental Assessment (EA) #DOI-BLM-V060-2009-041-EA and a Finding of No Significant Impact (FONSI) and soon thereafter released the documents for public comment. BLM received comments on the EA from Western Watersheds Project (WWP), Jim Shake, and Bob Moore.

In 2012, the Long Draw Fire burned portions of a nearby section of the Tree Spring Pipeline. This section of the Tree Spring pipeline, approximately 2.2 miles, traverses the Winter Area North Pasture of the Eiguren Allotment. The fire burned portions of the pipe that was not buried and remained on the surface of the ground. These portions of the pipe were not buried because it laid on bedrock or very shallow soil over bedrock. The damaged section of the pipeline terminates at a trough located in T.34 S., R.42 E., W.M. Sec. 31. This is one of two watering sources within the 4,482 acres of the Winter

Area North Pasture (see Map 2 for the location of the entire Tree Spring water pipeline system pipeline and troughs). In 2013, you made a request to reroute the pipeline. The proposed route would be approximately 1.5 miles in length and located in an area of deeper soils which would then be buried and protected from damage from future range fires (see Map 3 for the location of the existing damaged pipeline and proposed pipeline routes).

In 2014, BLM completed EA #DOI-BLM-OR-V060-2014-007-EA and a FONSI. Soon thereafter these documents were released for public comment. Comments were received from WWP. Responses to their comments can be found in Appendix A to this proposed decision.

PROPOSED DECISION

I will address the modifications to the Tree Spring Pipeline as analyzed in EA #DOI-BLM-V060-2009-041-EA and the proposed reroute of the fire damaged pipeline as analyzed in EA #DOI-BLM-OR-V060-2014-007-EA.

My proposed decision is as follows:

I select Alternative 3 from EA #DOI-BLM-V060-2009-041-EA

The unauthorized modifications to the Tree Spring Pipeline will be removed. This includes removing the two troughs, removing the two fences and placing the fence in its original location. The unauthorized portion of the pipeline (spur lines), buried beneath the surface of the ground, shall remain in place and will be rendered inoperable. The existing disturbed area will be broadcast seeded with a mix of perennial grasses and forbs. Boulders will be placed in the disturbed area to discourage use by vehicles and reduce the potential of creating a new jeep trail. The work will be completed by the BLM or under the BLM's supervision.

I select Alternative 2 of EA #DOI-BLM-OR-V060-2014-007-EA

The fire-damaged portion of the Tree Spring Pipeline will be rerouted. The new pipeline location is approximately 1.5 miles long and lies within T.34 S. R.42 E. W.M. sec. 31 and T.35 S. R.42 E. W.M. sec. 05 and sec. 06. The disturbed area will be seeded with crested wheatgrass. The buried portion of the abandoned pipeline will be left in place. The previous ground surface has recovered to a point where it is unnoticeable in many locations. In those areas where it continues to be noticeable, rehabilitation will take place. This includes picking up the old, damaged, exposed pipe, seeding barren areas (where appropriate) and placement of rocks along the pipeline route to discourage driving the route. The new pipeline will be installed in accordance with BLM specifications.

LAND USE PLAN CONFORMANCE

The Southeastern Oregon Resource Management Plan (SEORMP) is the governing management plan for the areas under discussion in this decision and states:

“Rangeland/Grazing Use: A combination of administrative solutions and rangeland project development will be implemented, as necessary, on site-specific basis to provide a sustained level of livestock use while maintaining resource values. Livestock grazing systems will be retained or revised

through the adaptive management process to meet management objectives. Structural rangeland projects will be implemented to facilitate meeting resource management objectives rather than making additional forage available.” – pg 59

The SEORMP also states:

“Standard Implementation Features and Procedures: Normal maintenance of existing projects and new projects will occur, as consistent with original design, through the life of the plan in order to support authorized uses of public land.”- pg S-2.

RATIONALE

Unauthorized modifications of range improvements

The EA #DOI-BLM-OR-V060-2009-041-EA analyzed three alternatives.

- Alternative 1- The no action alternative leaving the unauthorized range improvement modifications in place while not authorizing use for them.
- Alternative 2- The Proposed Action, authorizing the modifications and use of the Tree Spring Pipeline (spur line) extensions and Bankofier Fence.
- Alternative 3- Remove troughs/fence, and rehabilitate the disturbed areas alternative.

Since completion of EA #DOI-BLM-OR-V060-2009-041-EA, BLM has completed an inventory of public lands to determine whether wilderness characteristics are present. The area in question was determined to meet wilderness characteristic criteria. The inventory unit is the Rattlesnake Creek Unit (OR-036-028).

Oregon Natural Desert Association, the Committee for the High Desert and Western Watersheds Project (collectively ONDA) and the BLM have litigated, through the Ninth Circuit Court of Appeals, the BLM’s SEORMP (RMP) in ONDA v. BLM, No. 05-35931 (9th Cir.). The appellate court ruled that wilderness characteristics are among the resources the BLM can manage under the Federal Land Policy and Management Act, that the BLM must address whether and to what extent wilderness values are present in the SEORMP planning area (those lands outside of WSAs) and if so, how the BLM should treat lands with such values.

The parties to these actions, BLM and ONDA, agreed to a settlement. The settlement stated that,

“BLM shall initiate a resource management plan (RMP) amendment for ...Southeastern Oregon...” It also stated that, *“until such time as the BLM completes the RMP amendment BLM shall not implement any projects in the RMP planning area that fall within either ...an inventory unit determined by BLM to possess wilderness character, where such action would be deemed by BLM to diminish the size or cause the entire inventory unit to no longer meet the criteria for wilderness character...[Section 18].”* Further, the settlement agreement specified that, for a proposed project: *“... until the required RMP amendment is finalized, the BLM may only consider projects in units determined to possess wilderness characteristics by “... analyz[ing] the effects on wilderness character through each project’s NEPA process. Such analysis shall include an alternative that analyzes both mitigation and protection of any BLM-identified wilderness character that exists within the project area. Consistent with section 18 of the settlement agreement requiring an RMP amendment, “...until the BLM has completed an RMP*

amendment, the BLM shall not implement any project if its analysis determines that the effects of the project would cause an area with BLM-identified wilderness character to no longer meet the minimum wilderness character criteria [section 19].”

In this EA, BLM found that the unauthorized projects would not significantly impact the wilderness characteristic values within the Rattlesnake Creek Unit (OR-036-028). Although the unauthorized projects would not change the wilderness character determination of the unit as a whole, they could minimally decrease the size of the unit if authorized and that would be in violation of the settlement agreement. Therefore, I chose to select Alternative 3.

Finally, BLM cannot lose sight of the fact that the projects were modified or installed without the proper authority. One of the original reasons for the Taylor Grazing Act of 1934 was to “provide for the orderly use of the public lands.” Authorizing projects after the fact is contrary to orderly administration.

Rerouting the fire damaged pipeline

The analysis in EA #DOI-BLM-OR-V060-2014-007-EA compared two alternatives.

- Alternate 1 - Maintain the pipeline in its current location.
- Alternative 2 - Reroute the pipeline.

The new route will be easier and less costly to install because it traverses an area of deeper soils that allow the pipeline to be easily buried beneath the ground surface. The existing route traverses areas of very shallow soil on bedrock sites which would require blasting to bury the pipe. The pipeline must be buried to protect it from future rangeland fires and be in conformance with the land use plan. The pipeline is needed to continue to supply water for livestock and wildlife in the area.

This area has been previously disturbed when crested wheatgrass was planted during the 1960’s Vale Project and again in 2012 in conjunction with the Long Draw Emergency Stabilization and Rehabilitation seeding.

Although the pipeline route would cross Bull Creek, this drainage is ephemeral. There are no known perennial streams or riparian zones within or adjacent to the immediate project.

There are no known noxious weeds within the proximity of the project area.

The project or new pipeline route lies outside all Wilderness Study Areas (WSA), Lands With Wilderness Characteristic values (LWC), Areas of Critical Environmental Concern (ACEC), Research Natural Areas (RNA) and Wild and Scenic Rivers (WSR).

The route has been surveyed and there would be no impacts to cultural, paleo or special status species resources.

The new route traverses 0.4 miles of Preliminary General Habitat (PGH) for the Greater Sage-Grouse which is very similar to the existing route (Map 2). The potential impacts to sage-grouse are similar when comparing the original pipeline to the new route. However, the new route may result in fewer

impacts to sage-grouse because (1) maintenance of the new route would likely require fewer trips to check on the project (2) disturbance caused by blasting to bury the pipeline would not occur and (3) replacement of the pipeline due to rangeland fires would also not occur.

The Vale Project of 1965 removed all sagebrush, which is critical habitat for sage-grouse, within the project area and outlying areas and replaced it with crested wheatgrass. Any sagebrush recruitment since 1965 was removed by the Long Draw Fire of 2012. The closest Greater Sage-Grouse lek is the Bull Creek lek, which is 1.1 miles from the proposed project route and has not been active since 1999. Disturbance to Greater Sage-Grouse habitat from this project would not occur since the sagebrush was lost in the Long Draw Fire and the project area is not expected to contain Greater Sage-Grouse.

Despite the expectation of no disturbance to Greater Sage-Grouse caused by implementing the proposed action, the criteria specified in BLM Instruction Memorandum No. 2012-043, *Greater Sage-Grouse Interim Management Policies and Procedures*, will be followed. Standard implementation features and procedures for installing pipelines as discussed in EA #DOI-BLM-OR-V060-2014-007 will also be followed. Therefore I chose to select Alternative 2.

AUTHORITY

The authority under which this decision is made is found in the following 43 CFR 4100 citations:

4120.3-1(a) Range Improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

4120.3-1(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

4120.3-1(f) Proposed Range Improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969. The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

RIGHT OF PROTEST AND/OR APPEAL

If you wish to protest this decision in accordance with 43 CFR § 4160.2, you are allowed fifteen (15) days from receipt of this notice to file such a protest with:

Field Manager, Jordan/Malheur Resource Areas
Vale District Bureau of Land Management
100 Oregon Street
Vale, Oregon 97918

A protest should be made in writing and should specify the reasons clearly and concisely as to why you think the proposed decision is in error. Upon the timely filing of a protest, the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion of this review of the protest, the

authorized officer shall serve a final decision on the protestant, or his agent, or both, and the interested public in accordance with 43 CFR § 4160.3 (b).

In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice. Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. A period of 45 days from your receipt of the proposed decision is provided for filing an appeal and petition for stay of the decision pending final determination on appeal, as provided in 43 CFR § 4.470 and 43 CFR § 4160.4.

Any appeal should state clearly and concisely as to why the final decision is in error. All grounds of error not stated shall be considered waived and no such waived ground of error may be presented at the hearing unless ordered or permitted by the administrative law judge. Any appeal should be submitted in writing to:

Field Manager, Jordan/Malheur Resource Areas
Vale District Bureau of Land Management
100 Oregon Street
Vale, Oregon 97918

Filing an appeal does not by itself stay the effectiveness of a final BLM decision. If you wish to file a petition for a stay of the effectiveness of this decision, pursuant to 43 CFR 4.21, the petition for stay must accompany your notice of appeal. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

A petition for stay is required to show sufficient justification based on the standards listed below.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether or not the public interest favors granting the stay.

A notice of appeal electronically transmitted (e.g. email, facsimile, or social media) will not be accepted as an appeal. Also, a petition for stay that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as a petition for stay. Both of these documents must be received on paper at the office address above.

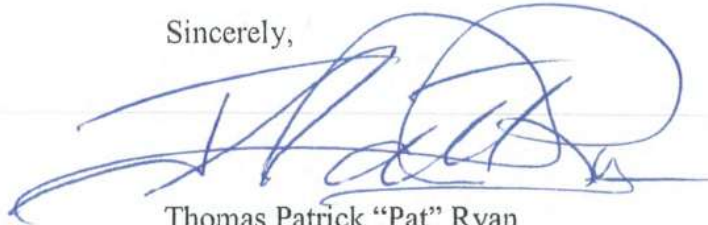
Persons named in the Copies sent to: sections of this decision are considered to be persons "named in the decision from which the appeal is taken." Thus, copies of the notice of appeal and petition for a stay must also be served on these parties, in addition to any party who is named elsewhere in this decision (see 43 CFR 4.471 (b)(1) & 43 CFR 4.413(a)) and the appropriate Office of the Solicitor (see 43 CFR 4.471 (b)(2) & 43 CFR 4.413 (c)): **Office of the Solicitor, US Department of the Interior,**

Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205 within 15 days after the original documents are filed with this office.

For privacy reasons, if the decision is posted on the internet, the Copies sent to: section will be attached to a notification of internet availability and persons named in that section are also considered to be persons “named in the decision from which the appeal is taken.”

Any person named in the decision, Copies sent to: section of the decision, or who received a notification of internet availability that receives a copy of a petition for a stay and/or an appeal and wishes to respond, see 43 CFR 4.21(b) for procedures to follow. If you have any questions, feel free to contact either Bill Lutjens at (541) 473-6358, or myself at (541) 473-6277.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Ryan', with a large, looping flourish extending from the end of the signature.

Thomas Patrick “Pat” Ryan
Field Manager
Jordan/Malheur Resource Areas

Enclosures

cc: *Copies Sent To:* list

Appendix A - RESPONSE TO PUBLIC COMMENTS on DOI-BLM-OR-V060-2014-007-EA

In May 2014, EA DOI-BLM-V060-2014-007 was mailed to the interested public of record for the Eiguren allotment. BLM solicited comments to the EA which were to be submitted to the BLM by May 27, 2014. Comments were received from Western Watersheds Project (WWP). The substantive comments received and my response to them follows:

Comment WWP #1: WWP has previously commented on decision making regarding the Eiguren allotment. Specifically, WWP commented on DOI-BLM-OR-V060-2009-041-EA, which evaluated options for dealing with unauthorized extended pipelines, fence route changes, and livestock water troughs that the permittee for Eiguren allotment installed in 2009. Those comments are attached for reference.

BLM Response: Comments were received timely on Tree Spring Pipeline Extension, DOI-BLM-OR-V060-2009-041-EA, however a decision was never issued. The unauthorized range improvement modifications are still in place. Administrative action was taken on the unauthorized modifications. The trespass was settled. Terms of settlement included not using the unauthorized pipeline extensions and troughs until the Vale District Bureau of Land Management was able to complete the necessary NEPA analysis and issue a decision.

Comment WWP #2: Rather than analyzing the creation of a new pipeline route in its own environmental analysis, BLM should address this project, and other range improvement projects for the allotment, in the context of NEPA analysis for grazing the Eiguren allotment as a whole. Pipelines servicing livestock water troughs have no independent utility from the grazing that takes place on the allotment. Absent the decision to continue grazing, there would be no need for livestock improvements such as pipelines. As such, authorizing grazing on Eiguren allotment and the proposed Tree Spring Pipeline Reroute are “connected actions” under NEPA that BLM must analyze together.

BLM Response: The re-routing of the fire damaged portion of the pipeline, or the reconstruction of the pipeline in its existing footprint, or an abandonment of that portion of the pipeline are not dependent on or connected to the existing grazing authorization (NEPA handbook pg. 45).

In addition, the construction, reconstruction and maintenance of range improvements are an action that was analyzed in the Proposed Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement. Those actions are also consistent with the Southeastern Oregon Resource Management (SEORMP) Plan and Record of Decision. One objective found within the SEORMP is:

Provide for a sustained level of livestock grazing consistent with other resource objectives and public land use allocations. Pg. 56.

The associated Management Actions states:

“A combination of administrative solutions and rangeland project development will be implemented, as necessary, on site-specific basis to provide a sustained level of livestock use while maintaining resource values.Structural rangeland projects will be implemented to facilitate meeting resource objectives rather than making additional forage available.”

Appendix A - RESPONSE TO PUBLIC COMMENTS on DOI-BLM-OR-V060-2014-007-EA

Comment WWP #3: WWP recommends that BLM consider a true No Action alternative for the burned section of the pipeline in addition to the status quo (rebuild pipeline in existing location) and new route alternatives. An actual No Action alternative would analyze the effects on the affected environment of declining to rebuild the burned pipeline, and allowing areas that are currently utilized by livestock that water at the trough that the burned pipeline services to recover naturally.

BLM Response: The “No Action” alternative as described in H-1790-1 National Environmental Policy Act Handbook for land use planning actions states: The No Action alternative is to continue to implement the management direction in the land use plan (i.e., the land use plan as written). Any other management approach should be treated as an action alternative. If, for example, plan evaluation identifies that implementation has not been in accordance with the management direction in the land use plan, you may consider continued non-conforming implementation as an action alternative, if it is a reasonable alternative.

Appendix S, Standard Implementation Features and Procedures of the SEORMP state the following: Normal maintenance of existing projects and new projects will occur, as consistent with original design, through the life of the plan in order to support authorized uses of public land. Maintenance can include activities such as replacement of pipeline sections, fencepost and wire replacement, cleaning of reservoirs within the original disturbance area, replacement of water troughs, cleaning and maintenance of spring boxes, cleaning or resetting of cattle guards, and maintenance of livestock handling facilities. While maintenance of existing facilities may occur in SMA's, there may be further mitigation actions required to ensure that values of these places are not impaired.

Comment WWP #4: Of the two existing alternatives, WWP favors Alternative 1. The pipeline, if rebuilt, should be rebuilt in its current location. This is because the current location of the pipeline is further from the closest known sage-grouse lek, and would not require disturbing new areas.

BLM Response: The closest known lek is the Bull Creek lek. The habitat surrounding this lek was burned by the Long Draw fire. In an effort to rehabilitate the Long Draw fire, this area was seeded with crested wheatgrass. This area was originally seeded in 1965 as part of the Vale Project. The Bull Creek lek was visited on numerous occasions in 2005 and 2013 and sage-grouse were not seen nor were there any sign of them using the lek such as the observation of scat or feathers. No sage-grouse have been counted on or near the lek since 1999.

Comment WWP #5: Projects like installing buried pipelines by ripping conveyance ditches are poor choices for public lands containing sage-grouse habitat, and for areas susceptible to invasive and noxious weeds. The area at issue, having recently burned, is prone to establishment of cheatgrass and other undesirable plant species even absent new ground disturbance. Disturbed areas where cheatgrass becomes established will allow cheatgrass to spread to other areas, decreasing the value of surrounding areas as habitat for sage-grouse and increasing the likelihood of fire returning frequently. Invasive and noxious weeds are likely to become established in the disturbed area despite BLM's or the permittee's best intentions and monitoring.

BLM Response: As stated above, in an effort to rehabilitate the Long Draw fire, this area was seeded to crested wheatgrass in the fall of 2012. This area was originally seeded in 1965 as part of the Vale

Appendix A - RESPONSE TO PUBLIC COMMENTS on DOI-BLM-OR-V060-2014-007-EA

Project. Project Design Features will be put in place to reduce the opportunity for noxious weed establishment and after implementation of the proposed action, the project area will be monitored for noxious weeds for a period of three years and if found, will be treated.

Comment WWP #6: Further, as WWP noted in its comments on the 2009 EA, puncturing less permeable soil layers by ripping trenches often results in sinking and erosion that continues to deepen over time. This is likely given that the alternative 2 reroute would lose elevation along its course, and encourage water to run in the sunken depression that is likely to result. In several years, runoff from heavy rain is likely to erode the pipeline and cause a scar on the landscape that reseeded will not prevent.

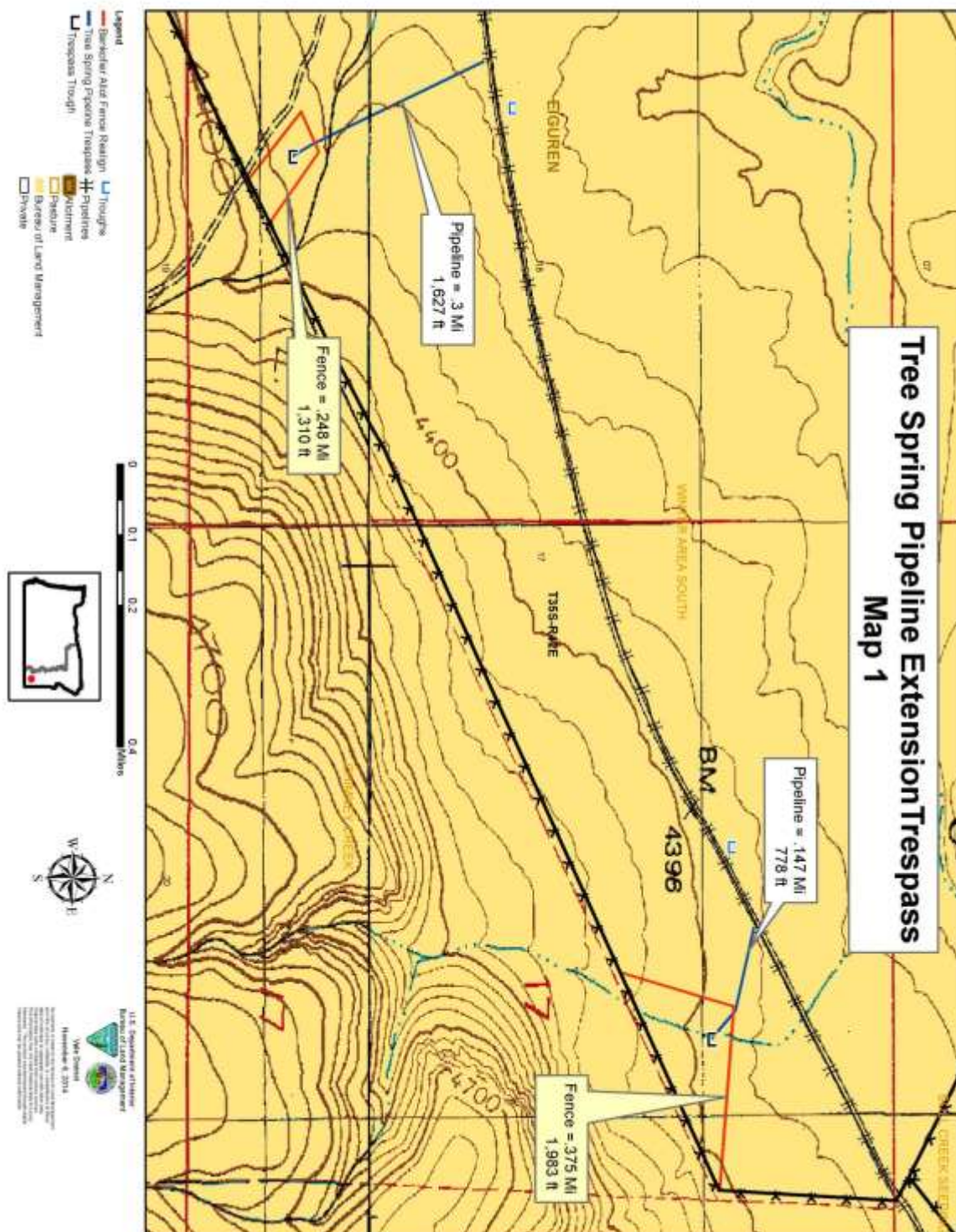
BLM Response: BLM does not anticipate scarring from runoff in this area. In the future, if erosion becomes a problem, small water bars will be placed perpendicular to the pipeline to discourage water or runoff from occurring and creating scarring as mentioned above.

Comment WWP #7: BLM should work to prevent further fragmentation in sage-grouse habitat in this area, and other areas that have been heavily altered by federal grazing projects. BLM should be working to improve sage-grouse habitat so that it may eventually be re-colonized and usable to sage-grouse, rather than taking measures that ensure lands will remain degraded and valueless to sage-grouse and other native wildlife.

BLM Response: BLM does not believe that rerouting the pipeline will fragment sage-grouse habitat.

Comment WWP #8: Lastly, in light of the permittee's history of defying BLM by developing unauthorized range improvements, BLM should not bend over backward to approve proposed range projects that will save the permittee money at the expense of exposing vulnerable lands to increased risk of erosion and invasion of cheatgrass. Instead, BLM should critically evaluate the permittee's proposal and weigh the benefits to the recovering ecosystem, native wildlife, and the general public. In order to do so, it should analyze whether or not the pipeline should even be reconstructed, and it should do so in the context of analyzing the environmental effects from grazing the allotment as a whole in the permit renewal.

BLM Response: BLM considered whether or not the existing burned portions of the pipeline should be reconstructed to the original state. The SEORMP states normal maintenance of existing projects will occur.



Appendix A - RESPONSE TO PUBLIC COMMENTS on DOI-BLM-OR-V060-2014-007-EA

